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*Attorneys for Defendants City of Tucson, Nicolo Solarino, Francisco Santa Maria, Marco Durazo, Sean Yeandle, Henry Gamez, Donovan Vance, Ryan Ake, Joseph Gradias, Eric Evans, Scott Ellis, Raymond Fleck, Silas Spencer, Keith Goldstein (hereafter "City Defendants")*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Irene Briseno, on her own behalf and as the  
personal representative of the estate of  
Damian Eryko Alvarado,

Plaintiff,

vs.

City of Tucson; Nicolo Solarino (Tucson  
Police); et al.,

Defendants.

No. 4:22-cv-00132

**DEFENDANTS' REPLY TO  
PLAINTIFF'S NOTICE OF  
SUPPLEMENTAL AUTHORITY**

(Assigned to Hon. Raner C. Collins)

Come now Defendants, by and through undersigned counsel, and submit the  
following Reply to Plaintiff's Notice of Supplemental Authority (Doc. 58).

Plaintiff submitted supplemental authority, *Perkins v. Edgar*, 2022 WL 14476272  
(9th Cir. Oct. 25, 2022), in support of her opposition to Defendants' Motion to Dismiss.  
Defendants agree that this Court should consider the supplemental authority submitted.

While the case does not change the analysis related to Plaintiff's Fourth  
Amendment claim, the case supports Defendants' arguments related to Plaintiff's claims  
for deliberate indifference to a medical need (Doc. 49, Sec. II(B)(4)) and for a Fourteenth  
Amendment claim for loss of familial association (Doc. 49, Sec. III).

With respect to Plaintiff's Fourth Amendment claim, Perkins only reiterates the  
standard which the parties here have previously briefed. Placing an officer's body weight

1 on a restrained suspect's neck and torso can constitute excessive force. But here, unlike in  
2 *Perkins*, officers applied body weight to Mr. Alvarado only long enough to secure him in  
3 restraints. And when contemplating the denial of qualified immunity, every distinction  
4 makes a difference.

5 In *Perkins*, the Ninth Circuit overturned the denial of qualified immunity to officers  
6 on claims related to failure to render aid and loss of familial association, finding that the  
7 plaintiff failed to meet the high "shocks the conscience," deliberate indifference standard  
8 applicable to both claims. Specifically, the Ninth Circuit held that the officers who  
9 summoned aid were still entitled to qualified immunity even though Perkins seemingly did  
10 not receive the aid that they summoned because no one directed the paramedics  
11 specifically to the plaintiff. And because the Perkins plaintiff could not meet the standard  
12 for the first claim, it necessarily meant that she also could not meet the standard on the loss  
13 of association claim.

14 Here, officers did precisely what the Ninth Circuit has said that they must – they  
15 promptly summoned medical aid for Mr. Alvarado.

16 DATED: January 3, 2023.

17 MICHAEL G. RANKIN  
18 City Attorney

19 By s/ Renee J. Waters  
20 Renee J. Waters  
21 Principal Assistant City Attorney  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By E. Acosta/rdv